

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:	)	Docket HWCA:
	)	SRPD 98/99 SCC-4003
Henkel Corporation,	)	
2200 Renaissance Boulevard	)	
Gulph Mills, PA 19406	)	
	)	
EPA ID# CAD 094 022 191	)	
	)	CORRECTIVE ACTION
Cognis Corporation	)	CONSENT AGREEMENT
5051 Estecreek Drive	)	
Cincinnati, OH 45232	)	
	)	
Henkel Corporation	)	
Cognis Corporation	)	
Respondents.	)	Health and Safety Code
	)	Sections 25187 and 25200.14
_____	)	

INTRODUCTION

1.1. The Department of Toxic Substances Control (DTSC), Henkel Corporation, and Cognis Corporation (Respondents) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.2. Jurisdiction exists pursuant to Health and Safety Code (HSC), sections 25187 and 25200.14, which authorize DTSC to issue a Consent Agreement to require corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents

into the environment from a hazardous waste facility.

1.3. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.4. Respondent Henkel was the operator and owner of a manufacturing facility located at 5568 East 61<sup>st</sup> Street, City of Commerce, California(Facility) which was conditionally authorized to treat hazardous waste. Respondent Cognis is currently the owner of the site, which historically engaged in the treatment by neutralization of acidic waste water which exhibited the characteristic of corrosivity pursuant to a Conditional Authorization issued to Henkel Corporation by DTSC on September 9, 1993. Prior to March 31, 1999, the site was used for the manufacture and refining of fatty acids and glycerin. Manufacturing at the site ceased at the end of March 1999. Acidic wastewater is no longer generated at site or treated in the Conditionally Authorized unit which Henkel closed in December 1999. Subsequently Ownership of the site transferred to Cognis on January 1, 2000.

1.5. The terms used in this Consent Agreement are as defined in section 66260.10 of Title 22 of the California Code of Regulations (Cal.Code Regs.), except as otherwise provided.

1.6. Respondents agree to implement all approved Workplan and to undertake all actions required by the terms and conditions of this Consent Agreement, including any

portions of this Consent Agreement incorporated by reference.

1.7. Respondents waive any right to request a hearing on this Consent Agreement pursuant to HSC section 25187.

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#### FINDINGS OF FACT

2.1.1. On December 30, 1996, Respondent Henkel submitted a Phase I Environmental Assessment Checklist (Phase I) pursuant to HSC section 25200.14 related to the facility. The Phase I identified three Areas Of Concern (AOCs) that have released either hazardous waste or hazardous waste constituents into the environment:

- \* Acetone release area resulting from leaking underground storage tank, (UG -1, capacity -15000 gallons)
- \* Methanol release area resulting from leaking underground storage tank, (UG-2, Capacity -10000 gallons)
- \* Dowtherm A Heat Transfer Fluid release area resulting from leaking underground storage tanks, (UG-4, Capacity - 3000 gallons and

UG-5, Capacity - 415 gallons)

2.1.2. A Tank Closure Report relating to the Facility submitted by *QST Environmental Inc.* on February 16, 1999, indicates that Underground Storage Tank 1 (UG-1) was cleaned and filled with sand by the Respondent Henkel in 1990 prior to promulgation of many of the current abandonment requirements. Underground Storage Tanks 2, 4, & 5 (UGs- 2, 4, & 5) were abandoned by *QST Environmental Inc.* in November 1998 on behalf of the Henkel Corporation, in accordance with a Workplan approved by the Los Angeles County Department of Public Works, and regulations of the Los Angeles County Fire Department (LACFD). All the four abovementioned tanks have been closed *in situ*. DTSC acknowledges the receipt of a Status Report on Underground Storage Tanks submitted on September 17, 1999.

2.1.3. Phase I identifies that further investigation is necessary to determine the existence, nature and/or extent of contamination at the Facility. There have been several subsurface investigations at the site which are documented in Appendix 1.

2.1.4. Based on the Phase I submittal, DTSC conducted a site visit on November 12, 1997, for the purpose of gathering information on the extent of contamination.

2.1.5. The site assessment report entitled "*Workplan*

*for Site Assessment*" dated March 20, 1998, the report of the site Assessment entitled "*Results of the Site Assessment*" dated July 27, 1998, and the Workplan entitled "*Workplan for Closing Underground Storage Tanks UG-1,UG-2,& UG-5 and Remediating Methanol and Acetone Impacted Soil*" dated June 10, 1998, each relating to the Facility confirmed elevated levels of acetone (0.07 mg/kg to 20,000 mg/kg) beneath and in the vicinity of UG-1, methanol (1.1 mg/kg to 14,000 mg/kg) beneath and in the vicinity of UG-2, and dowtherm A (0.7 mg/kg to 28,000 mg/kg) beneath and in the vicinity of UG-4 and UG-5.

2.1.6. Based on the Phase I submittal, site visit conducted by DTSC staff, the *Workplan for Site Assessment* dated March 20,1998, the *Results of the Site Assessment* dated July 27, 1998,and the *Workplan for Closing Underground Storage Tanks UG-1, UG-2, and UG-5*, dated June 10, 1998 DTSC had concluded that further investigation is needed to determine the nature and extent of contamination in the three AOCs.

2.1.7. Based on the aforementioned determination on January 22, 1999, DTSC issued a Draft Corrective Action Consent Agreement in order to reach an agreement with the Respondent Henkel to ensure that the extent of contamination is adequately assessed and that any potential hazard resulting from the release is properly mitigated.

2.1.8. A meeting was held on May 26, 1999 amongst the

representatives of DTSC, Los Angeles County Fire Department, Henkel Corporation, and Harding Lawson Associates, the consultant of Henkel Corporation to discuss the outstanding regulatory requirements associated with the full closure of all manufacturing operations at the Facility and revision of the Consent Agreement with respect to the full closure of the Facility.

2.1.9. During the May 26, 1999, meeting representatives of Henkel Corporation agreed to include the following additional six AOCs, which warrant further investigation, in the original list of AOCs:

- \* Areas where nickel was stored and used
- \* Above ground storage tank area (located on south side of the property near to the rail spur) where concentrated sulfuric acid was stored and it's vicinity
- \* Above ground storage tank area (located near to the waste water treatment unit) where concentrated sulfuric acid was stored and it's vicinity
- \* Storm water impoundment area
- \* Waste water sump area
- \* Waste water pre-treatment area

2.1.10. DTSC conducted a site visit on June 17, 1999 to gather information on the extent of contamination in the

new six AOCs.

2.2. Based on the foregoing facts and findings, DTSC has concluded that further investigation is needed to determine the nature and extent of contamination if any, in the 9 AOCs as listed below:

- \* Acetone release area resulting from leaking underground storage tank, (UG -1, capacity -15000 gallons)
- \* Methanol release area resulting from leaking underground storage tank, (UG-2, Capacity -10000 gallons)
- \* Dowtherm A Heat Transfer Fluid release area resulting from leaking underground storage tanks, (UG-4, Capacity - 3000 gallons and UG-5, Capacity - 415 gallons)
- \* Areas where nickel was stored and used
- \* Above ground storage tank area (located on south side of the property near to the rail spur) where concentrated sulfuric acid was stored and it's vicinity
- \* Above ground storage tank area (located near to the waste water treatment unit) where concentrated sulfuric acid was stored and it's vicinity

- \* Storm water impoundment area
- \* Waste water sump area
- \* Waste water pre-treatment area

### 2.3. Hazardous waste and hazardous waste

constituents of concern at the Facility are: Dowtherm A (a heat transfer fluid manufactured by Dow Chemical Inc., and is composed of 73 percent 1,1-biphenyl and 27 percent 1,1-oxybisbenzene), which has toxicity of Rat, Oral LD50: 2460 mg/kg body weight, poison by inhalation, moderately by ingestion. Human systemic effect by inhalation unspecified on the sense of smell and unspecified respiratory effects. Acetone which has toxicity of Rat, Oral LD50: 5800 mg/kg body weight, altered sleep time and produced tremors. OSHA does not list acetone as a carcinogen, the most common effects reported are headache from prolonged vapor inhalation and skin irritation resulting from its defatting action. Methanol is toxic mainly to the nervous system, particularly optic nerves, where damage can progress to permanent blindness. Methanol oxidizes in the body to form formaldehyde and formic acid. These derivatives are believed responsible for many of methanol's poisonous and toxic effects. The fetal ingestion dose is 100 to 250 ml, although death is reported from less than 33 ml. Nickel is an experimental carcinogen and teratogen. Ingestion of soluble salts of nickel causes nausea, vomiting, and diarrhea. Sulfuric acid is human poison



by unspecified route. Moderately toxic by ingestion. Sulfuric acid is also extremely irritating, corrosive, and toxic to tissue resulting in rapid destruction of tissue causing severe burns. Repeated contact with dilute solutions of sulfuric acid can cause a dermatitis, and repeated or prolonged inhalation of a mist can cause inflammation of the upper respiratory tract leading to chronic bronchitis.

2.4. The Facility comprises approximately 10 acres in size and is divided into two portions by a railway spur. The northern portion of the plant located north of the railway spur and south of East 61<sup>st</sup> Street when the facility was in operation contained a one story administrative office building, boilers, numerous aboveground storage tanks, the product processing building and 286,000-gallon waste water sump. The southern portion of the plant, located south of the railway spur and north of Randolph Street when the facility was in operation contained approximately 20 multiple-service aboveground storage tanks, a cooling tower, a product transfer and loading dock, various materials and equipment storage buildings, distillation towers and 1.25 million gallon storm water impoundment basin. The Facility is located at the center of heavy industrial complex in the City of Commerce. To the north is the Los Angeles Paper Company. To the east is the Pacific Die Casting Foundry. To the west, are Highway 710, and the Los Angeles River. The Los Angeles River is located

one-tenth of a mile to the west. The nearest residential area is located half mile south of the Facility in the City of Bell Garden and the nearest school is located one and half miles southeast of the facility in the City of Bell Garden. The nearest water body is the Los Angeles River. The water table is about 120 feet deep beneath the facility.

2.5. Releases from the Facility have a potential to leach into the groundwater and affect public water supply. Contaminated dust on site has a potential to become airborne and affect nearby residences. Workers at the Facility may become exposed to the chemical residues on site during work related activities, and to the contaminated soil during future site mitigation, demolition or related activities.

2.6. The area is currently paved with concrete, which should limit access to impacted soils thereby decreasing exposures from these contaminants through the major exposure pathways (e.g., inhalation, dermal contact, ingestion, etc.). Impacted soils are relatively inaccessible to remediation scenarios that would entail soil excavation, and attempted excavation of impacted soils could damage the structural integrity of the building area. The potential present and future receptors on the site are the contractors, their personnel and transient visitors.

2.7 The Southland Oil site is a former oil refinery which is located in one acre area adjacent to the Henkel

Property. The Southland Oil site has been used for oil related business since 1930's. Contaminants that have been identified at the Southland Oil site include heavy petroleum hydrocarbons, Polychlorinated biphenyls (PCBs), lead, halogenated hydrocarbons, aromatic and semivolatile compounds (Calsite Profile Report). There may have offsite migration in the past. Migration of contamination to the east and west of the site has not been studied. The TPH and lead hot spots are close to the site boundaries, and may have affected adjacent properties (RI/FS Report-1993). So, migrated contaminants if any, from the former Southland Oil company, adjacent to the southwest area of the Property are also the constituents of concern. Respondents agree to sample the Henkel site in the areas adjacent to the Southland Oil site to ascertain the presence and concentration of these constituents of concern. Upon discovery of any contamination from the Southland oil site\_which in the opinion of DTSC warrants remedial action, DTSC and respondents agree to enter into further negotiations to address this contamination.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and the Respondents shall each

designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between the Respondents and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice. DTSC reserves the right to disapprove of Respondents' Project Coordinator. DTSC's approval shall not be unreasonably withheld.

#### WORK TO BE PERFORMED

4. Respondents agree to perform the work undertaken pursuant to this Consent Agreement in a manner consistent with: the attached Scopes of Work; any DTSC-approved Work plans; HSC and other applicable state and federal laws and their implementing regulations; and applicable DTSC and USEPA guidance documents. Applicable guidance documents include, but are not limited to, the *Preliminary Endangerment Assessment* (PEA) Guidance Manual,

*Test Methods For Evaluating Solid Waste (SW846) Update III, Drilling, Coring, Sampling, and Logging at Hazardous Substance Release Sites (July 1995) - State of California Environmental Protection Agency Guidance Manual, Interim Guidance for Active Soil Gas Investigation (February 25, 1997) - Los Angeles Regional Water Quality Control Board.*

INTERIM MEASURES (IM)

5.1. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. DTSC will review the Respondents' Status Report on tanks and determine which interim measures, if any, Respondents will implement at the Facility. If deemed appropriate by DTSC, such determination may be deferred until additional data are collected. Respondents shall also evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. This current Consent Agreement would include cost reimbursement for DTSC's cost for the review of the documents submitted.

5.3. If at any time Respondents identify an

immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, Respondents shall notify the DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 30 days of receiving DTSC's written request, Respondents shall submit to DTSC an Interim Measures (IM) Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, the DTSC Project Coordinator may orally authorize the Respondents to act prior to DTSC's receipt of the IM Workplan.

5.4 If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, DTSC will notify Respondents in writing. Within 30 days of receiving DTSC's written notification, Respondents shall submit to DTSC for approval an IM

Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondents to act prior to receipt of the IM Workplan.

5.5 All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.6 Concurrent with the submission of an IM Workplan, Respondents shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan, Attachment 2.

5.7 Concurrent with the submission of an IM Workplan, Respondents shall submit for DTSC approval a community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community

concern about the Facility, DTSC may require Respondents to prepare a Public Participation Plan.

#### FACILITY INVESTIGATION

6.1. Within 60 days of the effective date of this Consent Agreement, Respondents shall submit to DTSC a Workplan for a Facility Investigation. The Investigation Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 1. DTSC will review the Workplan and notify Respondents in writing of DTSC's approval or disapproval.

6.2. The Investigation Workplan shall detail the methodology to: (1) gather data needed to make decisions on interim measures/stabilization during the early phases of the Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree, and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation



of all activities shall be included in the Workplan.

6.3. Respondents shall submit a Report to DTSC for approval in accordance with DTSC-approved Workplan schedule. The Report shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 1. If there is a phased investigation, separate FI Reports and a report that summarizes the findings from all phases of the FI must be submitted to DTSC. DTSC will review the Report and notify Respondents in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of an Investigation Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2. If Workplans for both an IM and FI are required by this Consent Agreement , Respondent may submit a single Health and Safety Plan that addresses the combined IM and FI activities.

6.5. Concurrent with the submission of an Investigation Workplan, Respondents shall submit for DTSC approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, DTSC will determine the level of community interest. Depending on the level of community interest, DTSC will decide which public participation activities are necessary. These

activities may include a FI Fact Sheet, a Public Participation Plan, a public notice and a public meeting.

6.6. Respondents shall evaluate the results of all sampling, tests and other data generated during the Facility Investigation in comparison with the current health-based screening levels for each contaminant. Respondents shall include a report of cumulative Health Risk Assessment in the final Facility Investigation Report.

#### CORRECTIVE MEASURES STUDY (CMS)

7.1. Respondents shall prepare a Corrective Measures Study if contaminant concentration exceed current health-based action levels and/or if DTSC determines that the contaminant released pose a potential threat to human health and/or the environment.

7.2. Within 60 days of DTSC's written approval of the Facility Investigation Report required in sections 6.3 and 6.6, Respondents shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 4.

7.3. The CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy the contamination at the Facility. The CMS Workplan

shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

7.4. Respondents shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondents can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study Workplan, or Respondents' justification for not proposing a treatability study.

7.5. Respondents shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study Report contained in Attachment 4. DTSC will review the CMS Report and notify Respondents in writing of DTSC's approval or disapproval.

#### REMEDY SELECTION

8.1. DTSC will provide the public with an opportunity

to review and comment on the final draft of the CMS Report, DTSC'S proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

8.2. Following the public comment period, DTSC may select final corrective measures or require Respondents to revise the CMS Report and/or perform additional corrective measures studies.

8.3. DTSC will notify Respondents of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

#### CORRECTIVE MEASURES IMPLEMENTATION (CMI)

9.1. Within sixty(60) days of Respondents' receipt of notification of DTSC's selection of the Corrective Measures, Respondents shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 5.

9.2. Concurrent with the submission of a CMI Workplan, Respondents shall submit to DTSC a Health and Safety Plan in

accordance with Attachment 2.

9.3. Concurrent with the submission of a CMI Workplan, Respondents shall submit for DTSC approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondents to prepare a Public Participation Plan.

9.4. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondents shall submit to DTSC the documents listed below. These documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 5.

- \* Operation and Maintenance Plan
- \* Draft Plans and Specifications
- \* Final Plans and Specifications
- \* Construction Workplan
- \* Construction Completion Report
- \* Corrective Measures Completion Report

9.5. DTSC will review all required CMI documents and notify Respondents in writing of DTSC's approval or disapproval.

9.6. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Respondents shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, financial test, or corporate guarantee as described in Title 22 Cal. Code Regs. section 66265.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondents are unable or unwilling to undertake the required actions.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT

10. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondents shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR)

should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondents.

#### DTSC APPROVAL

11.1. Respondents shall revise any work plan, report, specification, or schedule in accordance with DTSC's written comments. Respondents shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittal are subject to DTSC's approval or disapproval.

11.2. Upon receipt of DTSC's written approval, Respondents shall commence work and implement any approved work plan in accordance with the schedule and provisions contained therein.

11.3. Any DTSC approved Workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

11.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTAL

12.1. Written reports will be submitted in accordance with the schedules described in each approved Workplan.

12.2. Any report or other document submitted by Respondents pursuant to this Consent Agreement shall be signed and certified by the Project Coordinators, a responsible corporate officer, or a duly authorized representative.

12.3. The certification required by paragraph 12.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



12.4. Respondents shall provide two copies of all documents, including but not limited to, Work plans, reports, and correspondence of fifteen (15) pages or longer. Submittal specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

12.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

#### PROPOSED CONTRACTOR/CONSULTANT

13. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondents' contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within thirty (30) days of the effective date of this Consent Agreement, Respondents shall notify the DTSC Project Coordinator in writing of the name, title, address and qualifications of the professional engineer or registered geologist to be used in carrying out the terms of this Consent

Agreement. If such engineer or geologist has not been retained as of the effective date of this agreement, Respondent shall notify DTSC within 30 days of retaining such engineer or geologist. At any time Respondents have the right to change the primary professional engineer or registered geologist they use to carry out the terms of this Consent Agreement and shall notify DTSC of the name, title, and address and qualification of the new person. Respondents will advise DTSC of any contractors or consultants retained in the future to conduct the work required by this Consent Agreement. DTSC reserves the right to disapprove of Respondents' contractor and/or consultant. But DTSC's approval shall not be unreasonably withheld.

#### ADDITIONAL WORK

14. DTSC may determine or Respondents may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved Workplan. DTSC shall request in writing that Respondents perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such

determination, Respondents may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondents shall submit a work plan to DTSC for the additional work. Such Workplan shall be submitted to DTSC within sixty (60) days of receipt of DTSC's determination or according to an alternate schedule agreed upon by DTSC and Respondents. Upon approval of a Workplan, Respondents shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

#### QUALITY ASSURANCE

15.1. All sampling and analyses performed by Respondents under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Work plans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved Work plans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report (e.g., SI Report). Sampling and analysis conducted prior to the effective date of this Consent Agreement will not have to be in strict

conformance to the current DTSC and EPA guidance.

15.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondents propose to use must be specified in the applicable Workplan.

#### SAMPLING AND DATA/DOCUMENT AVAILABILITY

16.1. Respondents shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

16.2. Respondents shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any work plan required by this Consent Agreement. If Respondents believe it must commence emergency field activities without delay, Respondents may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

16.3. At the request of DTSC, Respondents shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondents pursuant to this Consent Agreement. Similarly, at

the request of Respondents, DTSC shall allow Respondents or their authorized representatives to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

#### ACCESS

17. Subject to the Facility's security and safety procedures, Respondents agree to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondents or their contractors or consultants.

#### RECORD PRESERVATION

18.1. Respondents shall retain during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the

Facility. Respondents shall ensure that DTSC is notified in writing ninety (90) days prior to the destruction of any such records, so that DTSC has the opportunity to take possession of any such records. Prior to transferring possession of these documents to a third party (non-signatory to this agreement) a copy of these records will be provided to DTSC. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Stephen W. Lavinger, Chief  
Southern California Branch  
Statewide Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

18.2. If Respondents retain or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondents will require any such agents, consultants, or contractors to provide Respondents a copy of all documents produced pursuant to this Consent Agreement.

18.3. The site which is the subject of this Consent

Agreement is closed, no employees of Respondent are routinely onsite and there is no secure storage area at the site for records. Therefore, all documents pertaining to this Consent Agreement shall be stored at the office of Respondent's Project Coordinator.

#### DISPUTE RESOLUTION

19.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondents fail to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

19.2. If Respondents disagree with any written decision by DTSC pursuant to this Consent Agreement, Respondents' Project\_Coordinators shall orally notify DTSC Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

19.3. If the Project Coordinators cannot resolve the dispute informally, Respondents may pursue the matter formally by placing its objection in writing. Respondents' written objection must be forwarded to:

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Stephen W. Lavinger, Chief  
Southern California Branch  
Statewide Regulatory Programs Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

A copy of the objection shall be forwarded to DTSC Project Coordinator. The written objection must be mailed to the Branch Chief within fourteen (14) days of Respondents' receipt of DTSC's written decision under paragraph 19.2. Respondents' written objection must set forth the specific points of the dispute and the basis for Respondents' position.

19.4. DTSC and Respondents shall have fourteen (14) days from DTSC's receipt of Respondents' written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondents may meet or confer with DTSC to discuss the dispute.

19.5. After the formal discussion period, DTSC will provide the Respondents with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by Southern California Branch Chief, Statewide Regulatory Programs Division, Department of Toxic Substances Control, or his/her designee.

19.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of



work to be performed under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

#### RESERVATION OF RIGHTS

20.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents failure to comply with any of the requirements of this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that DTSC has under any statutory, regulatory, or common law authority.

20.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

20.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the

environment should Respondent be unwilling or unable to timely perform such work. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondents for costs incurred by the State of California with respect to such actions. DTSC will notify Respondents in writing as soon as practicable regarding the decision to perform any work described in this section.

20.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondents are not capable of undertaking any of the work required, DTSC may order Respondents to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate or redress such release or threat. The deadlines for any actions required of Respondents under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

20.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that DTSC's approval of any work plan,

plan, and/or specification does not constitute a warranty or representation that the Work plans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondents with the terms of this Consent Agreement shall not relieve Respondents of its obligations to comply with HSC or any other applicable local, state, or federal law or regulation.

#### OTHER CLAIMS

21. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

#### OTHER APPLICABLE LAWS

22. All actions required to be taken pursuant to this Consent Agreement shall be undertaken in accordance with the

requirements of all local, state, and federal laws and regulations. Respondents shall obtain or cause their representatives to obtain all permits and approvals necessary under such laws and regulations.

#### REIMBURSEMENT OF DTSC'S COSTS

23.1. Respondents shall pay the costs incurred by DTSC in the implementation of this Consent Agreement.

23.2. An estimate of DTSC's costs with respect to the investigative phase is attached as Exhibit A showing the amount of \$29,904.00. It is understood by the parties that the amount shown on Exhibit A is an estimate only for the activities shown in Exhibit A and may differ from the actual costs incurred in fully by DTSC in implementing all activities under this Consent Agreement.

23.3. Respondents shall make an advance payment to DTSC in the amount of \$14,952.00 within 60 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's complete costs under this consent agreement, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 25 of this Consent Agreement.

23.4. DTSC will provide Respondents with a quarterly billing statement for all costs including those covered by the

advanced payment. If the advance payment does not exceed DTSC's complete costs under this Consent Agreement, after the advance payment, DTSC will provide Respondents with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. If Respondents do not pay an invoice within 60 days without good cause, the amount is subject to interest as provided by HSC section 25360.1.

23.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

23.6. Any dispute concerning costs pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

23.7. All payments shall be made within 60 days of the date of receipt by Respondents of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit  
Department of Toxic Substances Control

P.O. Box 806  
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondents' name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

#### MODIFICATION

24.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

24.2. Any requests for revision of an approved work plan requirement must be in writing. Such requests must be timely and provide justification for any proposed work plan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Southern California Branch Chief, State Regulatory Programs Division, Department of Toxic Substances Control, or his or her designee. Any approved work plan modification shall be incorporated by reference into this Consent Agreement.

## TERMINATION AND SATISFACTION

25. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondents' signature. The Acknowledgment will specify that Respondents have demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondents' continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

## EFFECTIVE DATE

26. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

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SIGNATORIES

27. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: June 28, 2000      BY: Signed by Juliette Rickles  
Signature/Respondent  
Henkel Corporation  
Associate General Counsel & Risk Management

DATE: June 28, 2000      BY: Signed by Juliette Rickles  
Typed or Printed Name and Title  
of Respondent  
Cognis Corporation  
Attorney-in-Fact

DATE: June 29, 2000      BY: Signed by Stephen W. Lavinger  
Stephen W. Lavinger, Chief  
Southern California Branch  
Statewide Regulatory Programs  
Division  
Department of Toxic Substances  
Control



#### **APPENDIX I**

- \* Letter from Emery Chemical to Los Angeles County Department of Public Works (LACDPW) dated September 13, 1985 including sampling report dated September 9, 1985 "Soils Analysis for Dowtherm Tank". (McKesson Environmental Services)
- \* Letter from Emery to LACDPW dated January 29, 1986 including "Report of Field Investigation, Emery Chemicals, Commerce, California", McKesson Environmental Services, January 20, 1986.
- \* Letter from Emery to LACDPW dated August 27, 1986 including "Report of Field Investigation, Small Dowtherm Tank, Emery Chemicals, Commerce, California", McKesson Environmental Services, August 14, 1986.
- \* Letter from Emery to LACDPW dated January 22, 1988 including "Report of Field Investigation, Emery Chemicals" Clayton Environmental Consultants, June 29, 1987.
- \* "Subsurface Investigation Report at Henkel Corporation, Emery Group", January 27, 1995, United Environmental Technologies, submitted to LACDPW in February 1995. Letter from Henkel to LACDPW discussing report dated March 8, 1995.
- \* Workplan and Underground Storage Tank Abandonment and Closure Plan at Henkel Corporation, Emery Group, dated November 27, 1995 and prepared by JDR Environmental.
- \* Letter dated August 20, 1996, from Henkel to LACDPW including "Field Testing Report and Site Remediation Workplan Methanol and Acetone Tanks at Henkel Corporation, Emery Group", JDR Environmental, July

26, 1996.

- \* Workplan for Site Assessment Henkel Corporation, Emery Group dated March 20, 1998 and prepared by QST Environmental Inc.
- \* Results of Site Assessment, Henkel Corporation, Emery Group dated July 27, 1998 and prepared by QST Environmental Inc.
- \* Workplan for Closing Underground Tanks UG-1, UG-2, & UG-5 and Remediating Methanol and Acetone Impacted Soil at Henkel Corporation, dated June 10, 1998 and prepared by QST Environmental Inc.
- \* Status Report & Request to Conduct Soil Vapor Extraction Pilot Study dated January 25, 1999 and prepared by QST Environmental Inc.
- \* Tank Closure Report Volume I (Tanks UG-1,-2,-3,-4 & -5) dated February 12, 1999 and prepared by QST Environmental Inc.
- \* Tank Closure Report Volume II (Tanks UG-6 & -7) dated February 12, 1999 and prepared by QST Environmental Inc.
- \* Status Report on Underground Storage Tanks dated August 30, 1999 and prepared by Harding Lawson Associates.